

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS ROMULO, et al.,

Plaintiff(s),

No. C 09-3296 PJH

v.

**ORDER OF DISMISSAL FOR
FAILURE TO PROSECUTE**

OPTIMA FUNDING, INC., et al.,

Defendant(s).

Plaintiffs having failed to appear as ordered for the case management conference on October 29, 2009, an order to show cause was issued on October 30, 2009, scheduling a hearing for November 19, 2009, in order that plaintiffs could show cause why their complaint should not be dismissed for failing to prosecute. Plaintiffs did not appear or otherwise respond to the order to show cause.

The court having considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and having determined that notwithstanding the public policy favoring the disposition of actions on their merits, the court's need to manage its docket and the public interest in the expeditious resolution of the litigation require dismissal of this action. Plaintiffs did not oppose the motion to dismiss filed by defendant AHMSI, did not appear at the hearing on that motion, failed to appear as ordered at the case management conference and failed to respond in any way to the court's order to show cause. AHMSI has been dismissed with prejudice. In view of plaintiff's lack of response to this court's prior order(s), the court finds there is no appropriate less drastic sanction. Accordingly, this action is dismissed with prejudice as to

1 the remaining defendants pursuant to Fed. R. Civ. pro. 41(b) for plaintiff's failure to
2 prosecute.

3 Moreover, the matter is also subject to dismissal as to all remaining defendants
4 without prejudice for failure to serve pursuant to Fed. R. Civ. Pro. 4(m).

5 IT IS SO ORDERED.

6 Dated: November 20, 2009



PHYLLIS J. HAMILTON
United States District Judge